

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE

v.

GEORGE P. JOHNSON

Defendant

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) I.D. No. 0706025356
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Submitted: December 17, 2008

Decided: March 12, 2009

Upon Defendant's Motion for Postconviction Relief.

SUMMARILY DISMISSED.

ORDER

Alexis S. Stutsky, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

George P. Johnson, Sussex Correctional Institution, Georgetown, Delaware,
pro se.

COOCH, J.

This 12th day of March, 2009, upon consideration of Defendant's
motion for postconviction relief, it appears to the Court that:

1. Following a trial (in which Defendant was represented by counsel), a jury convicted Defendant of Delivery of Cocaine to a Minor, Delivery of

Cocaine Within 300 Feet of a Park, and Criminal Trespass in the Third Degree.¹ On the Delivery of Cocaine to a Minor conviction, he was sentenced to a mandatory 10-year Level V prison term. On the Delivery of Cocaine Within 300 Feet of a Park conviction, he was sentenced to 10 years at Level V, suspended for 3 years at Level IV Crest Program, suspended after successful completion of the Crest program for 2 years of Level III probation. Defendant was assessed a \$100 fine on the criminal trespass conviction, which fine was suspended.

2. Defendant appealed his conviction to the Supreme Court. On September 19, 2008, the Supreme Court issued an order affirming the judgment of the Superior Court and concluding that Defendant's appeal was "wholly without merit and devoid of any arguably appealable issues."²

3. Defendant filed a the instant motion for postconviction relief on December 17, 2008. Defendant has asserted three grounds for relief. The

¹ The State dismissed a third delivery count during trial. The jury found Johnson not guilty of Endangering the Welfare of a Child.

² *Johnson v. State*, 959 A.2d 28 (Del. 2008) (Table) (holding that Defendant's arguments on appeal that a) there was insufficient evidence presented at trial to support his convictions, b) the prosecutor misled the jury, and c) one of the jurors was biased and should have been excused, lacked merit because the trial court did not commit plain error with respect to any of Defendant's claims).

following constitutes the entirety of the substantive portion of Defendant's motion for postconviction relief:

Ground one: Improper Statements

In closing the State's term "I" indicated a personal endorsement of particular testimony in Johnson's trial. Involving the clothing description of Grandma Lola.

Ground two: 5th Amendment Right Violated

In closing argument the State violated Johnson's 5th Amendment Right by exposing Johnson's record by stating—They knew him from "personal experience" from photos prior to investigation. Photos or known as "mug shots."

Ground Three: Contradiction in the verdict

Johnson was found guilty of two counts—In the first count states—Johnson Delivery cocaine to a minor—Count 3 states—Endangering the welfare of a child by Delivery cocaine to a minor, not guilty—Both count shows the same image.

In response to the question, "If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so," Defendant stated:

Improper statements, 5th Amendment Right violated, and ineffective assistance of counsel, and contradiction in the verdict. The reasons these grounds wasn't raised, due to the lack of poor representation by counsel.

4. Superior Court Rule 61(b)(2) provides in part that a "motion [for postconviction relief] . . . shall set forth in summary form the facts supporting each of the grounds thus specified." Pursuant to Rule 61(d)(4), this Court may summarily dismiss a motion for postconviction relief "if it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief." A

movant must support his or her assertions with “concrete allegations of actual prejudice, or risk summary dismissal.”³

6. It plainly appears from the motion that Defendant has not shown entitlement to relief. Defendant’s motion is completely conclusory, and Defendant has failed to support his claims with facts. For these reasons Defendant’s motion warrants summary dismissal.

7. For the reasons stated, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary, Kent County
cc: Investigative Services, Kent County
Alexis S. Slutsky, Esquire, Deputy Attorney General
George P. Johnson
Deborah L. Casey, Esquire

³ *State v. Childress*, 2000 WL 1610766, at *1 (Del. Super.). *See also, e.g., State v. Miller* 2007 WL 3287943 (Del. Super.).